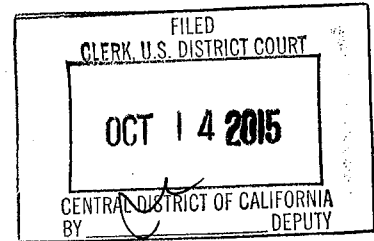


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BOSTON MUTUAL LIFE INSURANCE COMPANY

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18

19 ELIZABETH FLOCH,

20 Plaintiff,

21 v.

22 BOSTON MUTUAL LIFE INSURANCE  
COMPANY; PINNACLE CARE  
23 INTERNATIONAL, LLC, EMPLOYEE  
BENEFIT PLAN and DOES 1  
24 THROUGH 10;

25 Defendants.

Case No. 2:15-cv-01973-ODW(PJWx)

**STIPULATED PROTECTIVE ORDER**

Hon. Otis D. Wright

*This Protective Order does  
not authorize the parties to  
file documents under seal.  
Local Rule 79-5 governs such  
filings. POW*

26 The parties recognize that during the course of this litigation ("Litigation") they  
27 may be requested to produce or disclose certain documents, or to provide testimony  
28 containing confidential, proprietary, commercial, financial, non-public and/or protected

1 health information. The parties wish to ensure that confidential, proprietary, commercial,  
2 financial, non-public and/or protected health information is appropriately protected during  
3 the course of these proceedings.

4 Accordingly, through their respective undersigned counsel, the parties have  
5 stipulated that the Court enter the following Protective Order.

6 **IT IS HEREBY STIPULATED THAT:**

7 1. This Order applies to all documents, information and discovery material  
8 containing confidential, proprietary, commercial financial, non-public and/or protected  
9 health information including deposition, testimony, admissions and answers to  
10 interrogatories, given or taken in this action.

11 2. All information provided or produced by a party to this Litigation (the  
12 "Producing Party") which is identified with the word "Confidential" shall be treated as  
13 "Confidential Information."

14 (a) The Producing Party may identify any document(s) as Confidential  
15 Information by stamping such document(s) with the word "Confidential." In the  
16 alternative, the Producing Party may identify any document(s) as Confidential  
17 Information by designating certain produced bates ranges as Confidential in writing to all  
18 other parties. The failure to designate a document as "Confidential" does not constitute a  
19 waiver of such claim, and a Producing Party may so designate a document promptly after  
20 such document has been produced, with the effect that such document is subject to the  
21 protections of this Stipulated Protective Order.

22 (b) A party may, at the time of the deposition, designate the entire  
23 testimony as "Confidential Information" in which case the other party shall treat the  
24 testimony as such for a period of thirty (30) days after receipt of the transcript. Within  
25 thirty (30) days of the receipt of the deposition transcript, the designating party shall  
26 identify that deposition testimony which is to be treated as Confidential Information by  
27 stamping only such pages of the transcript as are to be treated as Confidential Information  
28 and serving the designated transcript on all parties. Pages not so stamped and served will

1 not be treated as Confidential Information. Confidential Information shall be used by any  
2 party receiving such information only for the purpose of this Litigation.

3 (c) Additionally, certain Confidential Information may be non-public  
4 and/or Protected Health Information ("PHI") as defined by the Health Insurance  
5 Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated  
6 there under. Subject to the rules of procedure governing this action and without prejudice  
7 to any objection made by any party except as otherwise provided herein, the parties are  
8 authorized to disclose to each other PHI relevant to any claim at issue in this Litigation,  
9 subject to all terms of this Order.

10 (d) Except upon order of the Court or with the prior written consent of the  
11 Producing Party, Confidential Information shall not be directly or indirectly disclosed to  
12 any person other than:

- 13 1. Legal counsel representing the parties to this case, and members of  
14 their law firms, including any law clerk, paralegal, secretarial, or clerical  
15 staff who are employed by, retained by, or assisting such counsel;
- 16 2. Court reporters who take and transcribe testimony, as well as  
17 necessary secretarial and clerical assistants;
- 18 3. Experts specially retained by attorneys in this litigation (including  
19 consulting or testifying experts) only if such persons agree in writing to be  
20 bound by the terms of this Order by signing a copy of Exhibit "A" attached  
21 hereto;
- 22 4. A party, such party's in-house legal counsel, or current or former  
23 officer(s), director(s), or employee(s) of a party deemed necessary by counsel  
24 to aid in the presentation, defense, or settlement of this action (or related  
25 litigation);
- 26 5. A witness at any deposition or other proceeding in this action and their  
27 counsel;
- 28 6. Any mediator retained by the parties in an effort to mediate and/or

1 settle the claims in this action;

2 7. Any insurance company that might provide coverage for all or any part  
3 of any judgment rendered in this action, as well as such insurance company's  
4 in-house legal counsel, or an officer, director, or employee of such insurance  
5 company deemed necessary by such insurance company to assist in the  
6 evaluation or settlement of this action.

7 3. The designation of "Confidential" upon any document pursuant to this Order  
8 shall not constitute a ruling upon any claim of privilege, nor a ruling that such document  
9 necessarily is entitled to the protection that may be accorded under the terms of this  
10 Order. If a party shall, at any time, conclude that a particular document or a portion  
11 thereof should not be treated as Confidential Information, it shall so notify all other  
12 parties. If the parties are unable to reach agreement regarding the status of the document  
13 and the protection to be afforded, the party contesting the claim of confidentiality shall  
14 continue to treat the documents as originally designated according to the terms of this  
15 Order until that party has presented the matter to the Court and the Court rules upon the  
16 status to be afforded the document. In the event of a challenge to the Confidential  
17 treatment of a particular document, the party making the designation shall carry the  
18 burden of establishing that the document is entitled to protection under Federal Rule of  
19 Civil Procedure 26(c) or other applicable law.

20 4. All documents of any nature, including briefs that have been designated as  
21 "Confidential" and that are filed with the Court, shall be filed under seal in accordance  
22 with applicable local rules. All documents so filed shall be released from confidential  
23 treatment only as provided by further order of the Court.

24 5. Any party to the Litigation who objects to the continued restriction on public  
25 access to any document filed under seal shall give written notice of his or her objection to  
26 the Producing Party. To the extent that the Producing Party seeks to continue the  
27 restriction on public access to documents filed with the Court, that party shall file an  
28 application with the Court for a judicial determination as to whether good cause exists for

1 continued restricted access to the document.

2 6. Any party may seek to introduce into evidence at trial any document which  
3 has been designated as Confidential. The Producing Party may request the Court to  
4 maintain the confidentiality of such information at trial. Within thirty (30) days after  
5 receipt of written notice of the final disposition of this lawsuit, whether by judgment and  
6 exhaustion of all appeals or by voluntary dismissal, the Producing Party or its counsel  
7 may withdraw all documents designated Confidential which have been filed or lodged  
8 with the Court in any manner. If such documents are not withdrawn by the Producing  
9 Party or its counsel within the time period stated above they will become part of the  
10 permanent public file of the proceedings or such documents may be destroyed.

11 7. Within thirty (30) days after receipt of written notice of the final disposition  
12 of this Litigation, whether by judgment and exhaustion of all appeals, or by voluntary  
13 dismissal, any party who has received documents designated Confidential shall either  
14 return all such documents to the Producing Party or provide to counsel for the Producing  
15 Party a written certification that all such documents have been destroyed.

16 8. Any waiver under this Protective Order must be made in writing or, if at a  
17 deposition or in Court, on the record. Any waiver, unless expressly made general, shall be  
18 deemed limited to the specified purposes of the request or proceeding involved, and shall  
19 not otherwise waive any of the protection provided by this Protective Order.

20 9. Nothing herein shall preclude a receiving party from using documents  
21 designated as "confidential" which:

22 (a) are or become available to the public other than through breach of this  
23 Order by the receiving party; or

24 (b) are or become otherwise lawfully available to the receiving party  
25 without restriction from a third party.

26 10. If a party in possession of Confidential Information receives a subpoena or  
27 other compulsory process from a non-party to this Stipulated Protective Order seeking  
28 production or other disclosure of such Confidential Information, that party shall give



1 written and telephone notice to counsel for the Producing Party within five (5) business  
2 days after receipt of the subpoena or other compulsory process; such notice shall identify  
3 the Confidential Information sought and enclose a copy of the subpoena or other  
4 compulsory process. If the Producing Party timely seeks a protective order, the party to  
5 which the subpoena or other compulsory process was issued or served shall not produce  
6 the Confidential Information called for prior to receiving a court order or the consent of  
7 the Producing Party. In the event that such Discovery Material containing Confidential  
8 Information is produced to the non-party, such material shall still be treated by the parties  
9 to this action in accordance with the designation as Confidential by the parties to this  
10 Stipulated Protective Order.

11 11. Inadvertent failure to designate materials as Confidential Information at the  
12 time of production may be supplemented by written notice given by the producing party.  
13 Upon receipt of such notification, all documents, materials, or testimony so designated  
14 shall be fully subject to this Stipulation and Order as if it had been initially so designated;  
15 provided, however, that the receiving party shall incur no liability for any previous  
16 treatment of such information in conformance with its original designation.  
17 Notwithstanding the foregoing, no party may designate materials under the Stipulation  
18 and Order later than 90 days after the materials were produced to an opposing party  
19 pursuant to this Stipulation and Order.

20 12. In the event a Producing Party produces two or more identical copies of a  
21 document and any such copy is designated with a lesser degree of confidentiality than any  
22 other copy, all such identical documents shall be treated in accordance with the most  
23 restrictive designation on any copy once the inconsistent designation is known. The  
24 Producing Party shall be responsible for informing the party receiving the inconsistently  
25 designated information of the inconsistent designation; however, if any person subject to  
26 this Stipulation and Order receives such inconsistently designated information, and has  
27 actual knowledge of the inconsistent designation, the person shall treat all copies in  
28 accordance with the most restrictive designation.

1           13. In the event that a Producing Party inadvertently produces to any other party  
2 any materials that are privileged or otherwise immune from discovery, in whole or in part,  
3 pursuant to the attorney-client privilege, work product doctrine, or other applicable  
4 privilege, such privileged materials may be retrieved by the Producing Party by giving  
5 written notice to all parties to whom the Producing Party inadvertently provided copies of  
6 the produced privileged materials of the claim of privilege and the identity of the  
7 documents inadvertently produced. This notice must be provided within thirty (30)  
8 business days of the date on which the Producing Party becomes aware of the inadvertent  
9 production. Upon receipt of such notice, all parties or other persons who have received a  
10 copy of the inadvertently produced materials shall promptly return any and all copies of  
11 those materials to the Producing Party. The terms of this paragraph shall not be deemed a  
12 waiver of a party's right to challenge the Producing Party's designation of materials as  
13 privileged (provided, however, that any such challenge to the designation may only be  
14 made following the return of such identified documents to the Producing Party), nor shall  
15 such inadvertent production of any material that is subsequently retrieved pursuant to this  
16 paragraph be deemed to be a waiver of the claim of privilege asserted. No party shall use  
17 any inadvertently produced privileged materials, or information gleaned from any  
18 inadvertently produced privileged materials, in connection with this Litigation or any  
19 related actions. Any party returning material to a Producing Party pursuant to this  
20 paragraph may then move the Court for an Order compelling production of the material,  
21 but said motion shall not assert as ground for entering such an Order that the Producing  
22 Party waived any privilege because of the inadvertent production.

23           14. Within 60 days of the termination of this action, including any appeals, each  
24 party shall either destroy or return to the opposing party all documents designated by the  
25 opposing party as "Confidential" or "Confidential – Attorneys' Eyes Only," and all copies  
26 of such documents, and shall destroy all extracts and/or data taken from such documents.  
27 Each party shall provide a certification as to such return or destruction within the 60-day  
28 period. However, Attorneys shall be entitled to retain a set of all documents filed with the

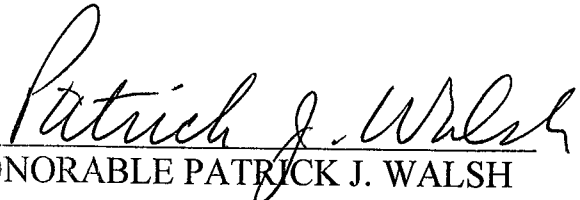
1 Court and all correspondence generated in connection with the action.

2 15. The terms and provisions of this Protective Order are subject to modification,  
3 extension or limitation as may be hereafter agreed upon by the parties in writing or by  
4 order of this Court.

5 16. Neither the approval of the form of this Protective Order or the execution of  
6 the Protective Order by the Court shall operate as an admission against or otherwise  
7 prejudice any contention of any party on any motion provided for herein or for any other  
8 purpose, nor shall it be interpreted as a waiver of any party's rights to seek modification  
9 from the Court of any or all provisions of this Protective Order.

10 17. In the event additional parties join or are joined in this action, they shall not  
11 have access to confidential information until the newly joined party, by its counsel, has  
12 executed and, at the request of any party, filed with the Court, its agreement to be fully  
13 bound by and comply with all terms of this Protective Order. This Protective Order shall  
14 also apply to documents or other information produced or provided in this case by any  
15 non-party which agrees in writing to be bound by and comply with all terms of this  
16 Protective Order.

17 SIGNED this 14 day of October, 2015.

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20 HONORABLE PATRICK J. WALSH  
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1 STIPULATED AND AGREED TO:

2  
3  
4 Dated: October 13, 2015

DONAHUE AND HORROW LLP

5  
6 By: /s/ Michael B. Horrow  
7 Michael B Horrow

8 ATTORNEYS FOR PLAINTIFF  
9 ELIZABETH FLOCH

10 EDISON, McDOWELL & HETHERINGTON LLP

11  
12  
13 By: /s/ Blaire B. Johnson  
14 Raymond J. Tittmann  
15 Jodi K. Swick  
16 Thomas F.A. Hetherington  
17 Blaire A. Johnson

18 ATTORNEYS FOR DEFENDANT  
19 BOSTON MUTUAL LIFE INSURANCE  
20 COMPANY  
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EXHIBIT A

AFFIDAVIT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

PERSONALLY APPEARED before the undersigned officer, duly authorized to administer oaths, \_\_\_\_\_, who states under oath as follows:

1) My name is \_\_\_\_\_. I am over the age of twenty-one (21) and I am competent to testify and have personal knowledge of the matters set forth herein.

2) I have read the Stipulated Protective Order (the "Protective Order"), in action C.A. No. 2:15-cv-01973-ODW-PJW styled *Elizabeth Floch v. Boston Mutual Life Insurance Company, et al.*, in the United States District Court for the Central District of California (the "Litigation"), a copy of which is attached to this Affidavit.

3) I have been informed by \_\_\_\_\_, counsel for \_\_\_\_\_ that materials being shown or provided to me, as described in the list attached to this Affidavit, contain information that has been designated Confidential Information, as defined in the Protective Order.

4) I promise that I have not and will not divulge, or undertake to divulge to any person or recording device any Confidential Information shown or told to me except as authorized in the Protective Order. I further represent that I will not use any Confidential Information for any purpose other than the Litigation, and that, at the termination of the Litigation, I will return all Confidential Information with which I have been provided to the counsel from whom I received such Confidential Information.

5) I will abide by the terms of the Protective Order.

6) For the purposes of enforcing the terms of the Protective Order, I hereby submit to the jurisdiction of the court in the Litigation.

1 FURTHER AFFIANT SAYETH NOT.

2 DATED: \_\_\_\_\_

3 By \_\_\_\_\_

4  
5  
6  
7 I, \_\_\_\_\_, a Notary Public in and for said County in  
8 said State, hereby certify that \_\_\_\_\_, whose name is signed to the  
9 foregoing AFFIDAVIT and who is known to me, acknowledged before me on this day  
10 that, being informed of the contents of such instrument, he/she executed the same  
11 voluntarily on the day the same bears date.

12 Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

13  
14 \_\_\_\_\_  
15 NOTARY PUBLIC

16 [SEAL]

17 My Commission Expires: \_\_\_\_\_  
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